

AMENDED IN SENATE MAY 13, 2013

AMENDED IN SENATE MAY 7, 2013

AMENDED IN SENATE APRIL 25, 2013

AMENDED IN SENATE APRIL 15, 2013

SENATE BILL

No. 355

Introduced by Senator Beall

February 20, 2013

An act to amend *Section 37006 of the Public Resources Code, and to amend Sections 17053.30 and 23630 of the Revenue and Taxation Code*, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 355, as amended, Beall. Conservation: tax credits.

The Natural Heritage Preservation Tax Credit Act of 2000 requires the Wildlife Conservation Board to implement a program under which property, as defined, may be contributed to the state, any local government, as defined, or to any nonprofit organization designated by a local government, based on specified criteria, in order to provide for the protection of wildlife habitat, open space, and agricultural lands.

The Personal Income Tax Law and the Corporation Tax Law allow a credit against the taxes imposed by those laws in the amount equal to 55% of the fair market value of any qualified contribution, as defined, contributed during the taxable year pursuant to the Natural Heritage Preservation Tax Credit Act of 2000, as provided.

This bill would allow for the transfer of the credit allowed pursuant to the Natural Heritage Preservation Tax Credit Act of 2000 *from prior years whose carryover period has not expired* by the taxpayer to an unrelated party, as provided.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 **SECTION 1.** *Section 37006 of the Public Resources Code is*
2 *amended to read:*

3 37006. (a) (1) Under the program, upon approval by the board,
4 a donor may contribute qualified property to a donee and receive
5 a tax credit for a portion of the value of the property, as provided
6 in Sections 17053.30 and 23630 of the Revenue and Taxation
7 Code.

8 (2) *If the board approves a transfer of the credit pursuant to*
9 *subdivision (f) of Section 17053.30 or subdivision (f) of Section*
10 *23630 of the Revenue and Taxation Code, the board shall provide*
11 *a certificate to the donor evidencing that approval, in a form*
12 *satisfactory to the Franchise Tax Board.*

13 (b) The board shall adopt guidelines or regulations to implement
14 the program, including procedures for applications submitted
15 pursuant to Chapter 4 (commencing with Section 37010) and for
16 the evaluation of properties proposed to be contributed pursuant
17 to the program. Chapter 3.5 (commencing with Section 11340) of
18 Part 1 of Division 3 of Title 2 of the Government Code does not
19 apply to the guidelines or regulations adopted pursuant to this
20 section.

21 ~~**SECTION 1.**~~

22 **SEC. 2.** *Section 17053.30 of the Revenue and Taxation Code*
23 *is amended to read:*

24 17053.30. (a) There shall be allowed as a credit against the
25 “net tax,” as defined in Section 17039, an amount equal to 55
26 percent of the fair market value of any qualified contribution made
27 on or after January 1, 2000, and not later than June 30, 2008, and
28 on or after January 1, 2010, and not later than June 30, 2015, by
29 the taxpayer during the taxable year to the state, any local
30 government, or any designated nonprofit organization, pursuant
31 to Division 28 (commencing with Section 37000) of the Public
32 Resources Code.

33 (b) For purposes of this section, “qualified contribution” means
34 a contribution of property, as defined in Section 37002 of the Public

Resources Code, that has been approved for acceptance by the Wildlife Conservation Board pursuant to Division 28 (commencing with Section 37000) of the Public Resources Code.

(c) In the case of any pass-thru entity, the fair market value of any qualified contribution approved for acceptance under Division 28 (commencing with Section 37000) of the Public Resources Code shall be passed through to the partners or shareholders of the pass-thru entity in accordance with their interest in the pass-thru entity as of the date of the qualified contribution. For purposes of this subdivision, the term “pass-thru entity” means any partnership, “S” corporation, or limited liability company treated as a partnership.

(d) If the credit allowed by this section exceeds the “net tax,” the excess may be carried over to reduce the “net tax” in the following year, and the succeeding seven years if necessary, until the credit is exhausted.

(e) This credit shall be in lieu of any other credit or deduction which the taxpayer may otherwise claim pursuant to this part with respect to the property or any interest therein that is contributed.

(f) (1) Notwithstanding any other law, for each taxable year beginning on or after January 1, 2013, a taxpayer may transfer ~~any credit, in whole or in part, allowed under this section~~ *credits from prior years whose carryover period has not expired* to an unrelated party.

~~(2) At the time the project is under consideration by a department or the Wildlife Conservation Board, the donor shall indicate to the department or the Wildlife Conservation Board, in the form and manner specified by the department or the Wildlife Conservation Board, the donor’s interest in transferring the credit, in whole or in part, to an unrelated party.~~

~~(3) On and after January 1, 2013, the Wildlife Conservation Board shall maintain a list of parties that are interested in acquiring a tax credit pursuant to this subdivision. The Wildlife Conservation Board shall collect all required information necessary for the transfer of the credit, including the social security or other taxpayer identification number of the unrelated party to whom a credit could be transferred and the amount of the tax credit the party is interested in acquiring.~~

~~(4) As part of the approval process, the Wildlife Conservation Board shall match projects with donors interested in transferring~~

1 credits with parties interested in acquiring a tax credit. All parties
2 shall agree to any proposed transfer of a tax credit.

3 ~~(5) The Wildlife Conservation Board shall establish procedures~~
4 ~~as needed, including, but not limited to, the use of an escrow~~
5 ~~account, for the tax credit to be purchased by the acquiring entity,~~
6 ~~the donor to receive the payment for the value of the transferred~~
7 ~~tax credit at the time of project closing, and for a certificate~~
8 ~~evidencing the tax credit to be given to the unrelated party. The~~
9 ~~Wildlife Conservation Board shall issue a certificate, in the form~~
10 ~~and manner specified by the Franchise Tax Board, that shall include~~
11 ~~all required information regarding the credit.~~

12 ~~(6) For purposes of this subdivision, "department" has the same~~
13 ~~meaning as defined in subdivision (d) of Section 37002 of the~~
14 ~~Public Resources Code.~~

15 *(2) The taxpayer shall report to the Wildlife Conservation Board*
16 *prior to the transfer of the credit, in the form and manner specified*
17 *by the Wildlife Conservation Board, all required information*
18 *regarding the transfer of the credit, including the social security*
19 *or other taxpayer identification number of the unrelated party to*
20 *whom the credit has been transferred and the face amount of the*
21 *credit transferred, for the approval of the Wildlife Conservation*
22 *Board.*

23 *(3) Upon approval of the transfer, the Wildlife Conservation*
24 *Board shall provide a certificate to the taxpayer evidencing the*
25 *approval, in the form and manner specified by the Franchise Tax*
26 *Board, that shall include all required information regarding the*
27 *credit.*

28 ~~(7)~~

29 *(4) The Wildlife Conservation Board shall not approve a transfer*
30 *of a credit under this section if the consideration received by the*
31 *taxpayer in exchange for the credit is less than 90 percent of the*
32 *value of the credit to be transferred.*

33 ~~SEC. 2.~~

34 *SEC. 3.* Section 23630 of the Revenue and Taxation Code is
35 amended to read:

36 23630. (a) There shall be allowed as a credit against the "tax,"
37 as defined in Section 23036, an amount equal to 55 percent of the
38 fair market value of any qualified contribution made on or after
39 January 1, 2000, and not later than June 30, 2008, and on or after
40 January 1, 2010, and not later than June 30, 2015, by the taxpayer

1 during the taxable year to the state, any local government, or any
2 designated nonprofit organization, pursuant to Division 28
3 (commencing with Section 37000) of the Public Resources Code.

4 (b) For purposes of this section, “qualified contribution” means
5 a contribution of property, as defined in Section 37002 of the Public
6 Resources Code, that has been approved for acceptance by the
7 Wildlife Conservation Board pursuant to Division 28 (commencing
8 with Section 37000) of the Public Resources Code.

9 (c) In the case of any pass-thru entity, the fair market value of
10 any qualified contribution approved for acceptance under Division
11 28 (commencing with Section 37000) of the Public Resources
12 Code shall be passed through to the partners or shareholders of
13 the pass-thru entity in accordance with their interest in the pass-thru
14 entity as of the date of the qualified contribution. For purposes of
15 this subdivision, the term “pass-thru entity” means any partnership
16 or “S” corporation.

17 (d) If the credit allowed by this section exceeds the “tax,” the
18 excess may be carried over to reduce the “tax” in the following
19 year, and the succeeding seven years if necessary, until the credit
20 is exhausted.

21 (e) This credit shall be in lieu of any other credit or deduction
22 that the taxpayer may otherwise claim pursuant to this part with
23 respect to the property or any interest therein that is contributed.

24 (f) (1) Notwithstanding any other law, for each taxable year
25 beginning on or after January 1, 2013, a taxpayer may transfer ~~any~~
26 ~~credit, in whole or in part, allowed under this section~~ *credits from*
27 *prior years whose carryover period has not expired* to an unrelated
28 party.

29 ~~(2) At the time the project is under consideration by a~~
30 ~~department or the Wildlife Conservation Board, the donor shall~~
31 ~~indicate to the department or the Wildlife Conservation Board, in~~
32 ~~the form and manner specified by the department or the Wildlife~~
33 ~~Conservation Board, the donor’s interest in transferring the credit,~~
34 ~~in whole or in part, to an unrelated party.~~

35 ~~(3) On and after January 1, 2013, the Wildlife Conservation~~
36 ~~Board shall maintain a list of parties that are interested in acquiring~~
37 ~~a tax credit pursuant to this subdivision. The Wildlife Conservation~~
38 ~~Board shall collect all required information necessary for the~~
39 ~~transfer of the credit, including the social security or other taxpayer~~
40 ~~identification number of the unrelated party to whom a credit could~~

1 ~~be transferred and the amount of the tax credit the party is~~
2 ~~interested in acquiring.~~

3 ~~(4) As part of the approval process, the Wildlife Conservation~~
4 ~~Board shall match projects with donors interested in transferring~~
5 ~~credits with parties interested in acquiring a tax credit. All parties~~
6 ~~shall agree to any proposed transfer of a tax credit.~~

7 ~~(5) The Wildlife Conservation Board shall establish procedures~~
8 ~~as needed, including, but not limited to, the use of an escrow~~
9 ~~account, for the tax credit to be purchased by the acquiring entity;~~
10 ~~the donor to receive the payment for the value of the transferred~~
11 ~~tax credit at the time of project closing, and for a certificate~~
12 ~~evidencing the tax credit to be given to the unrelated party. The~~
13 ~~Wildlife Conservation Board shall issue a certificate, in the form~~
14 ~~and manner specified by the Franchise Tax Board, that shall include~~
15 ~~all required information regarding the credit.~~

16 ~~(6) For purposes of this subdivision, “department” has the same~~
17 ~~meaning as defined in subdivision (d) of Section 37002 of the~~
18 ~~Public Resources Code.~~

19 *(2) The taxpayer shall report to the Wildlife Conservation Board*
20 *prior to the transfer of the credit, in the form and manner specified*
21 *by the Wildlife Conservation Board, all required information*
22 *regarding the transfer of the credit, including the social security*
23 *or other taxpayer identification number of the unrelated party to*
24 *whom the credit has been transferred and the face amount of the*
25 *credit transferred, for the approval of the Wildlife Conservation*
26 *Board.*

27 *(3) Upon approval of the transfer, the Wildlife Conservation*
28 *Board shall provide a certificate to the taxpayer evidencing the*
29 *approval, in the form and manner specified by the Franchise Tax*
30 *Board, that shall include all required information regarding the*
31 *credit.*

32 ~~(7)~~

33 *(4) The Wildlife Conservation Board shall not approve a transfer*
34 *of a credit under this section if the consideration received by the*
35 *taxpayer in exchange for the credit is less than 90 percent of the*
36 *value of the credit to be transferred.*

1 ~~SEC. 3.~~

2 *SEC. 4.* This act provides for a tax levy within the meaning of
3 Article IV of the Constitution and shall go into immediate effect.

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